

**DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION**

TP 28,561

In re: 3616 Connecticut Avenue, N.W. Unit 312

Ward Two (2)

**AMY SCHREIBER**

Tenant/Appellant

v.

**ROBERT BURGDORF & ANDREA FARBMAN**

Housing Providers/Appellees

**ORDER DISMISSING APPEAL**

**May 28, 2008**

**PER CURIAM.** This case is on appeal from the District of Columbia Department of Consumer and Regulatory Affairs (DCRA), Rental Accommodations and Conversion Division (RACD), to the Rental Housing Commission (Commission). The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. Law 6-10, D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-510 (2001) and the District of Columbia Municipal Regulations, 14 DCMR §§ 3800-4399 (2004), govern these proceedings.

**I. PROCEDURAL HISTORY**

Amy Schreiber, tenant of 3616 Connecticut Avenue, N.W., Unit 312 filed a petition with the Housing Regulation Administration against her housing providers, Robert Burgdorf and Andrea Farbman, on March 8, 2006. In the petition, the tenant sought \$15,533 in damages for loss of services/facilities, illegal rent increases, and fees.

The RACD sent the tenant a Notice of Hearing via United States Postal Service (USPS) Priority Mail with delivery confirmation on May 23, 2006, informing her that a hearing would take place June 26, 2006. The tenant did not receive the notice because it was undeliverable due to an invalid address.<sup>1</sup> On September 22, 2006, the RACD issued the decision and order in TP 28,561 dismissing the petition with prejudice because the tenant, Amy Schreiber failed to appear at the hearing convened on June 26, 2006. The RACD's decision and order dismissing the tenant's case was sent to the correct address and received by the tenant on September 23, 2006.<sup>2</sup>

On October 11, 2006, the tenant filed a Notice of Appeal/Move to Reconsider the RACD decision in the Commission. On May 21, 2007, the Commission issued a Notice of Scheduled Hearing, advising the parties of the hearing date, July 26, 2007. The record reflects that the USPS delivered the hearing notice to the tenant's address on May 21, 2007.<sup>3</sup> In the Notice of Scheduled Hearing, the Commission informed the parties that the "failure to appear at the scheduled time [would] not preclude the Commission from hearing the oral argument of the appearing party and/or disposing of the appeal. Failure of an appellant to appear may result in the dismissal of the party's appeal." Notice of Scheduled Hearing at 1.

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<sup>1</sup> Notice of the June 26, 2006 hearing was sent to the tenant by USPS Priority Mail with Delivery Confirmation, receipt number 0304 1070 0000 0666 1617. The USPS track and confirm website reveals that the notice was "undeliverable as addressed."

<sup>2</sup> The RACD's decision and order dismissing the tenant's case was sent to the tenant by USPS Priority Mail with Delivery Confirmation, receipt number 0303 3430 0001 2273 0344. The USPS track and confirm website reflects that the notice was delivered to the tenant's address of record on September 23, 2006.

<sup>3</sup> Notice of the hearing was sent to the tenant by USPS Priority Mail with Delivery Confirmation, receipt number 0306 1070 0003 0614 0551. The USPS track and confirm website reflects that the notice was delivered to the tenant's address of record on May 22, 2007.

Present at the hearing was Edward Allen, counsel on behalf of the appellees, Robert Burgdorf and Andrea Farbman. The tenant, Amy Schreiber, who bore the burden of advancing the issues raised in her appeal, failed to attend the Commission's hearing. Consequently, the housing provider moved to dismiss the appeal due to the tenant's failure to appear.

## **II. THE COMMISSION'S ORDER**

Pursuant to the DCAPA, D.C. OFFICIAL CODE § 2-509(b) (2001), "[i]n contested cases, ...the proponent of a rule or order shall have the burden of proof." Here, the tenant/appellant was the proponent of the Notice of Appeal/Move to Reconsider and therefore had the burden to prosecute the appeal in the Commission. The tenant/appellant received actual notice of the Commission's hearing and failed to appear. The tenant did not contact the Commission with a reason for her failure to appear, nor did she request a continuance of the hearing date. The Commission's Notice of Scheduled Hearing warns parties that their failure to appear may result in the dismissal of the appeal.

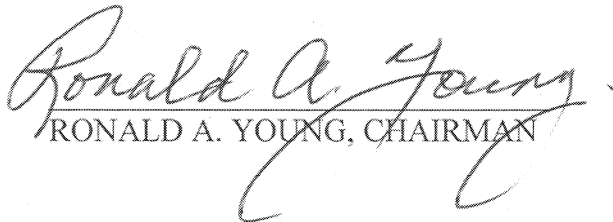
In Stancil v. Davis, TP 24,709 (RHC Oct. 30, 2000), the Commission dismissed an appeal when neither the housing provider nor his attorney appeared at the scheduled hearing. Affirming the Commission's dismissal in the housing provider's appeal, the District of Columbia Court of Appeals (DCCA) held that the Commission has authority to dismiss an appeal when the appellant fails to attend a scheduled hearing. Stancil v. District of Columbia Rental Hous. Comm'n, 806 A.2d 622 (D.C. 2002). The DCCA recognized that although the Commission does not have a specific regulation that prescribes dismissal when a party fails to appear, 14 DMCR § 3828.1 (2004) empowers the Commission to rely on court rules when its rules are silent. The regulation provides:

When these rules are silent on a procedural issue before the Commission, that issue shall be decided by using as guidance the current rules of civil procedure published and followed by the Superior Court of the District of Columbia and the rules of the District of Columbia Court of Appeals.

14 DMCR § 3828.1 (2004). The “court’s Rule 14 [D.C. App. R. 14] permits dismissal of an appeal ‘for failure to comply with these rules or for any other lawful reason.’ In addition, [its] Rule 13 [D.C. App. R. 13] authorizes an appellee to file a motion to dismiss whenever an applicant fails to take the necessary steps to comply with the court’s procedural rules.” Stancil, 806 A.2d at 625.

Accordingly, the appeal of the tenant/appellant is dismissed because the tenant failed to appear at the hearing and prosecute her appeal.

SO ORDERED.

  
RONALD A. YOUNG, CHAIRMAN

#### MOTIONS FOR RECONSIDERATION

Pursuant to 14 DCMR § 3823 (2004), final decisions of the Commission are subject to reconsideration or modification. The Commission’s rule, 14 DCMR § 3823.1 (2004), provides, “[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision.”

#### JUDICIAL REVIEW

Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2001), “[a]ny person aggrieved by a decision by the Rental Housing Commission... may seek judicial review of the decision ... by filing a petition for review in the District of Columbia Court of Appeals.” Petitions for review of the Commission’s decisions are filed in the District of Columbia Court of Appeals and are governed by Title III of the Rules of the District of Columbia Court of Appeals. The Court may be contacted at the following address and telephone number:

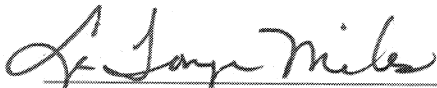
D.C. Court of Appeals  
Office of the Clerk  
500 Indiana Avenue, N.W., 6<sup>th</sup> Floor  
Washington, D.C. 20001  
(202) 879-2700

### CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Order to Dismiss Appeal in TP 28,561 was sent by priority mail with delivery confirmation, postage prepaid, this **28<sup>th</sup> day of May, 2008**, to:

Amy Schreiber  
3616 Connecticut Avenue, NW  
Apt. 302  
Washington, DC 20008

Edward Allen, Esquire  
UDC David A. Clarke School of Law  
4200 Connecticut Avenue, N.W.  
Building 38, 2<sup>nd</sup> Floor  
Washington, D.C. 20008



LaTonya Miles  
Contact Representative  
(202) 442-8949